

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH L. FAULKNER,

Petitioner,

v.

M. POLLARD,

Respondent.

No. 1:20-cv-01748-NONE-HBK

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE AND CLOSE  
CASE, AND DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY

(Doc. Nos. 1, 6)

Petitioner Kenneth L. Faulkner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 9, 2021, the assigned magistrate judge issued findings and recommendations recommending that the petition be dismissed as an unauthorized successive petition. (Doc. No. 6.) The findings and recommendations were served on petitioner at his address of record and contained notice that any objections thereto were to be filed within thirty (30) days of service. (*Id.* at 4.) Petitioner filed two sets of objections to the pending findings and recommendations and multiple “addendums.” (Doc. Nos. 11, 16, 17, 18, 19.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including petitioner’s

1 objections, the court concludes that the findings and recommendations are supported by the  
2 record and by proper analysis.

3 Having determined that petitioner is not entitled to habeas relief, the court now turns to  
4 whether a certificate of appealability should issue. The federal rules governing habeas cases  
5 brought by state prisoners require a district court issuing an order denying a habeas petition to  
6 either grant or deny therein a certificate of appealability. *See* Rules Governing § 2254 Case, Rule  
7 11(a). A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal, rather an  
8 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36  
9 (2003); *see also* 28 U.S.C. § 2253(c)(1)(A) (permitting habeas appeals from state prisoners only  
10 with a certificate of appealability). A judge shall grant a certificate of appealability “only if the  
11 applicant has made a substantial showing of the denial of a constitutional right,” 28 U.S.C.  
12 § 2253(c)(2), and the certificate must indicate which issues satisfy this standard, 28 U.S.C.  
13 § 2253(c)(3). In the present case, the court finds that reasonable jurists would not find the court’s  
14 rejection of petitioner’s claims to be debatable or conclude that the petition should proceed  
15 further. Moreover, it appears that petitioner has now been released from confinement. Under  
16 these circumstances, the court declines to issue a certificate of appealability.

17 Accordingly:

- 18 1. The findings and recommendations issued on March 9, 2021 (Doc. No. 6) are  
19 adopted in full;
- 20 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 21 3. The court declines to issue a certificate of appealability; and
- 22 4. The Clerk of the Court is directed to assign a district judge to this case for the  
23 purpose of closing the case and then to close the case.

24 IT IS SO ORDERED.

25 Dated: October 13, 2021

26   
UNITED STATES DISTRICT JUDGE